

1 (All parties and counsel listed on Signature Page)

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 THE REGENTS OF THE UNIVERSITY OF  
12 CALIFORNIA, a California corporation

13 Plaintiff,

14 v.

15 ROGER JINTEH ARRIGO CHEN, an  
16 individual; GENIA TECHNOLOGIES, INC., a  
Delaware corporation; and DOES 1-25,

17 Defendant.

Case No. 3:16-cv-07396-EMC

STIPULATED PROTECTIVE ORDER  
AND [~~PROPOSED~~] ORDER

18 Plaintiff The Regents of the University of California (“Plaintiff” or “the University”), and  
19 Defendants Roger Jinteh Arrigo Chen and Genia Technologies, Inc. (collectively “Defendants”),  
20 hereby stipulate through their respective attorneys as follows:

21 1. PURPOSES AND LIMITATIONS

22 Disclosure and discovery activity in this action are likely to involve production of  
23 confidential, proprietary, or private information for which special protection from public  
24 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
25 This Order does not confer blanket protections on all disclosures or responses to discovery and  
26 the protection it affords from public disclosure and use extends only to the limited information or  
27 items that are entitled to confidential treatment under the applicable legal principles. As set forth  
28 in Section 14.4 below, this Protective Order does not entitle the Parties to file confidential

1 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and  
2 the standards that will be applied when a party seeks permission from the court to file material  
3 under seal.

4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
6 information or items under this Order.

7 2.2 “CONFIDENTIAL” Information or Items: information, documents, and things the  
8 Designating Party believes in good faith is/are not generally known to others, and which  
9 the

10 Designating Party (i) would not normally reveal to third parties except in confidence or  
11 has

12 undertaken with others to maintain in confidence, or (ii) believes in good faith is protected  
13 by a right to privacy under federal or state law or any other applicable privilege or right  
14 related to confidentiality or privacy.

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
16 well as their support staff).

17 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

19 2.5 Designating Party: a Party or Non-Party that designates information or items that it  
20 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
22 CODE.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless of the  
24 medium or manner in which it is generated, stored, or maintained (including, among other things,  
25 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
26 responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to  
28 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or

as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely sensitive "Confidential Information or Items" representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.10 House Counsel: attorneys who are employees of a party to this action, or of an entity related to a party, such as a parent corporation. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.13 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.15 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and

1 subcontractors. This definition includes a professional jury or trial consultant retained in  
2 connection with this litigation and mock jurors retained by such a consultant to assist them in  
3 their work. Professional Vendors do not include consultants who fall within the definition of  
4 Expert set forth above.

5       2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
6 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
7 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

8       2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
9 Producing Party.

### 10 3. SCOPE

11       The protections conferred by this Order cover not only Protected Material (as defined  
12 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
13 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,  
14 or presentations by Parties or their Counsel that might reveal Protected Material. However, the  
15 protections conferred by this Order do not cover the following information: (a) any information  
16 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the  
17 public domain after its disclosure to a Receiving Party as a result of publication not involving a  
18 violation of this Order, including becoming part of the public record through trial or otherwise;  
19 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the  
20 Receiving Party after the disclosure from a source who obtained the information lawfully and  
21 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at  
22 trial shall be governed by a separate agreement or order.

### 23 4. DURATION

24       Even after final disposition of this litigation, the confidentiality obligations imposed by  
25 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
26 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
27 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
28 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,

including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to have been made in bad faith or for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection,

1 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
2 appropriate markings in the margins) and must specify, for each portion, the level of protection  
3 being asserted.

4 A Party or Non-Party that makes original documents or materials available for inspection  
5 need not designate them for protection until after the inspecting Party has indicated which  
6 material it would like copied and produced. During the inspection and before the designation, all  
7 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
8 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
9 copied and produced, the Producing Party must determine which documents, or portions thereof,  
10 qualify for protection under this Order. Then, before producing the specified documents, the  
11 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
13 CODE”) to each page that contains Protected Material. If only a portion or portions of the  
14 material on a page qualifies for protection, the Producing Party also must clearly identify the  
15 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
16 each portion, the level of protection being asserted.

17 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
18 the Designating Party may identify on the record, before the close of the deposition, hearing, or  
19 other proceeding, all protected testimony and specify the level of protection being asserted. When  
20 it is impractical to identify separately each portion of testimony that is entitled to protection and it  
21 appears that substantial portions of the testimony may qualify for protection, the Designating  
22 Party may have up to 30 days to identify the specific portions of the testimony as to which  
23 protection is sought and to specify the level of protection being asserted. Alternatively, a  
24 Designating Party may specify, at the deposition or up to 30 days afterwards, that the entire  
25 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
26 ATTORNEYS’ EYES ONLY.” Until the 30-day period has elapsed, all transcripts shall be  
27 treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

28 Parties shall give the other parties notice if they reasonably expect a deposition, hearing,

1 or other proceeding to include Protected Material so that the other parties can ensure that only  
2 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
3 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
4 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

6 Transcripts containing Protected Material shall have an obvious legend on the title page  
7 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
8 pages (including line numbers as appropriate) that have been designated as Protected Material and  
9 the level of protection being asserted by the Designating Party. The Designating Party shall  
10 inform the court reporter of these requirements. Any transcript that is prepared before the  
11 expiration of the 30-day period for designation shall be treated during that period as if it had been  
12 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
13 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
14 actually designated.

15 (c) for information produced in some form other than documentary and for any  
16 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
17 container or containers in which the information or item is stored the legend “CONFIDENTIAL,”  
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
19 – SOURCE CODE.” If only a portion or portions of the information or item warrant protection,  
20 the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify  
21 the level of protection being asserted.

22 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified  
23 information, documents or things as “CONFIDENTIAL” or HIGHLY CONFIDENTIAL -  
24 ATTORNEYS’ EYES ONLY” does not waive the Designating Party’s right to secure protection  
25 under this Order for such Material. Upon discovery of an inadvertent failure to designate, a  
26 Producing Party may notify the Receiving Party in writing that the Material is to be designated as  
27 “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY”, Upon receipt of such notice, the Receiving  
28 Party must make all reasonable efforts to assure that the Material is treated in accordance with the

1 terms of this Order, subject to the right to challenge the propriety of such designation(s). The  
2 Producing Party shall provide substitute copies of documents bearing the confidentiality  
3 designation. Any Receiving Party will also make all reasonable efforts to retrieve any documents  
4 from anyone who had received the documents prior to the notification to the Receiving Party of  
5 the inadvertent failure to designate and who is no longer permitted to access the documents under  
6 the new designation.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at  
9 any time. Unless a prompt challenge to a Designating Party's confidentiality designation is  
10 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a  
11 significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
12 confidentiality designation by electing not to mount a challenge promptly after the original  
13 designation is disclosed.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
15 process by providing written notice of each designation it is challenging and describing the basis  
16 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
17 notice must recite that the challenge to confidentiality is being made in accordance with this  
18 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
19 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
20 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
21 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
22 designation was not proper and must give the Designating Party an opportunity to review the  
23 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
24 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
25 stage of the challenge process only if it has engaged in this meet and confer process first or  
26 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
27 a timely manner.  
28



1           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
3 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 14 days  
4 of the conclusion of the meet and confer process set out in Section 6.2. Each such motion must  
5 be accompanied by a competent declaration affirming that the movant has complied with the meet  
6 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
7 make such a motion including the required shall waive the confidentiality designation for each  
8 challenged designation. In addition, the Challenging Party may file a motion challenging a  
9 confidentiality designation at any time if there is good cause for doing so, including a challenge to  
10 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to  
11 this provision must be accompanied by a competent declaration affirming that the movant has  
12 complied with the meet and confer requirements imposed by the preceding paragraph.

13           The burden of persuasion in any such challenge proceeding shall be on the Designating  
14 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
15 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
16 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
17 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
18 material in question the level of protection to which it is entitled under the Producing Party's  
19 designation until the Court rules on the challenge.

## 20     7.     ACCESS TO AND USE OF PROTECTED MATERIAL

21           7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
22 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
23 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
24 the categories of persons and under the conditions described in this Order. When the litigation has  
25 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
26 DISPOSITION).

27           Protected Material must be stored and maintained by a Receiving Party at a location and  
28 in a secure manner that ensures that access is limited to the persons authorized under this Order.

1           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
3 information or item designated “CONFIDENTIAL” only to:

4                   (a)     the Receiving Party’s Outside Counsel of Record in this action, including  
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
6 information for this litigation;

7                   (b)     the officers, directors, and employees (including House Counsel) of the  
8 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
9 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10                  (c)     Experts (as defined in this Order) of the Receiving Party to whom  
11 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
12 and Agreement to Be Bound” (Exhibit A);

13                  (d)     the court and its personnel;

14                  (e)     court reporters and their staff, and Professional Vendors including  
15 professional jury or trial consultants, to whom disclosure is reasonably necessary for this  
16 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17                  (f)     during their depositions, witnesses in the action to whom disclosure is  
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
19 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
20 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
21 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
22 under this Protective Order; and

23                  (g)     the author or recipient of a document containing the information or a  
24 custodian or other person who otherwise possessed or knew the information.

25           7.3    Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
26 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
27 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
28 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
3 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
4 information for this litigation;

5 (b) Designated House Counsel of the Receiving Party (1) to whom disclosure  
6 is reasonably necessary for this litigation, (2) who has signed the “Acknowledgment and  
7 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph  
8 7.4(a)(1), below, have been followed;<sup>1</sup>

9 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably  
10 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be  
11 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,  
12 have been followed;

13 (d) the court and its personnel;

14 (e) court reporters and their staff, and Professional Vendors including  
15 professional jury or trial consultants to whom disclosure is reasonably necessary for this litigation  
16 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

17 (f) the author or recipient of a document containing the information or a  
18 custodian or other person who otherwise possessed or knew the information.

19 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
21 CODE” Information or Items to Designated House Counsel or Experts.

22 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
23 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or  
24 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
25 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)  
26 \_\_\_\_\_

27  
28 <sup>1</sup> This Order contemplates that Designated House Counsel shall not have access to any information or items  
designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 sets forth the full name of the Designated House Counsel and the city and state of his or her  
2 residence and (2) describes the Designated House Counsel's current and reasonably foreseeable  
3 future primary job duties and responsibilities (including a statement of whether the Designated  
4 House Counsel is involved in any competitive decision making).

5 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the  
6 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
7 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS'  
8 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" pursuant to paragraph 7.3(c)  
9 first must make a written request to the Designating Party that (1) identifies the general categories  
10 of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY  
11 CONFIDENTIAL – SOURCE CODE" information that the Receiving Party seeks permission to  
12 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her  
13 primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's  
14 current employer(s), (5) identifies each person or entity from whom the Expert has received  
15 compensation or funding for work in his or her areas of expertise or to whom the expert has  
16 provided professional services, including in connection with a litigation, at any time during the  
17 preceding five years,<sup>2</sup> and (6) identifies (by name and number of the case, filing date, and location  
18 of court) any litigation in connection with which the Expert has offered expert testimony,  
19 including through a declaration, report, or testimony at a deposition or trial, during the preceding  
20 five years.

21 (b) A Party that makes a request and provides the information specified in the  
22 preceding respective paragraphs may disclose the subject Protected Material to the identified  
23 Designated House Counsel or Expert unless, within 10 days of delivering the request, the Party  
24 receives a written objection from the Designating Party. Any such objection must set forth in  
25

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26  
27 <sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the  
28 Expert should provide whatever information the Expert believes can be disclosed without violating any  
confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with  
the Designating Party regarding any such engagement.

1 detail the grounds on which it is based.

2 (c) A Party that receives a timely written objection must meet and confer with  
3 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
4 agreement within seven days of the written objection. If no agreement is reached, the Party  
5 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as  
6 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)  
7 seeking permission from the court to do so. Any such motion must describe the circumstances  
8 with specificity, set forth in detail the reasons why disclosure to Designated House Counsel or the  
9 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
10 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
11 must be accompanied by a competent declaration describing the parties' efforts to resolve the  
12 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and  
13 setting forth the reasons advanced by the Designating Party for its refusal to approve the  
14 disclosure.

15 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the  
16 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
17 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
18 Material to its Designated House Counsel or Expert.

19 8. SOURCE CODE

20 (a) To the extent production of source code becomes necessary in this case, a  
21 Producing Party may designate source code as "HIGHLY CONFIDENTIAL – SOURCE CODE"  
22 if it comprises or includes confidential, proprietary or trade secret source code.

23 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE  
24 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –  
25 ATTORNEYS' EYES ONLY" information and may be disclosed only to the individuals to  
26 whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be  
27 disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House  
28 Counsel.

1 (c) Any source code produced in discovery shall be made available for inspection, in a  
2 format allowing it to be reasonably reviewed and searched, during normal business hours or at  
3 other mutually agreeable times, at an office of the Producing Party's counsel or another mutually  
4 agreed upon location. The source code shall be made available for inspection on a secured  
5 computer in a secured room without Internet access or network access to other computers, and the  
6 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto  
7 any recordable media or recordable device. The Producing Party may visually monitor the  
8 activities of the Receiving Party's representatives during any source code review, but only to  
9 ensure that there is no unauthorized recording, copying, or transmission of the source code.

10 (d) The Receiving Party may request paper copies of limited portions of source code  
11 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or  
12 other papers, or for deposition or trial, but shall not request paper copies for the purpose of  
13 reviewing the source code other than electronically as set forth in paragraph (c) in the first  
14 instance. The Producing Party shall provide all such source code in paper form, including bates  
15 numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE." The Producing Party  
16 may challenge the amount of source code requested in hard copy form pursuant to the dispute  
17 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the  
18 "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute  
19 resolution.

20 (e) The Receiving Party shall maintain a record of any individual who has inspected  
21 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all  
22 paper copies of any printed portions of the source code in a secured, locked area. The Receiving  
23 Party shall not create any electronic or other images of the paper copies and shall not convert any  
24 of the information contained in the paper copies into any electronic format. The Receiving Party  
25 shall only make additional paper copies if such additional copies are (1) necessary to prepare  
26 court filings, pleadings, or other papers (including a testifying expert's expert report), (2)  
27 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper  
28

1 copies used during a deposition shall be retrieved by the Producing Party at the end of each day  
2 and must not be given to or left with a court reporter or any other unauthorized individual.

3 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
4 LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation that compels  
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
8 – SOURCE CODE,” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification shall  
10 include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to  
12 issue in the other litigation that some or all of the material covered by the subpoena or order is  
13 subject to this Protective Order. Such notification shall include a copy of this Protective Order;  
14 and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
16 the Designating Party whose Protected Material may be affected.<sup>3</sup>

17 If the Designating Party timely seeks a protective order, the Party served with the  
18 subpoena or court order shall not produce any information designated in this action as  
19 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
20 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from  
21 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
22 permission. The Designating Party shall bear the burden and expense of seeking protection in that  
23 court of its confidential material – and nothing in these provisions should be construed as  
24 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
25 another court.

26 \_\_\_\_\_  
27 <sup>3</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to  
28 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from  
which the subpoena or order issued.

10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of the Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to consent to the production of its confidential information within 14 days, to the extent not prohibited by pre-existing confidentiality obligations, the Producing Party shall identify the name of the non-consenting Non-Party to the Receiving Party so that the Receiving Party can negotiate with the Non-Party directly.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this



Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

12. PROSECUTION BAR

Any attorney representing any Party, whether in-house or outside counsel, and any person associated with a Party who receives another Party’s Protected Material that is designated “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” and/or who reviews, accesses, or otherwise learns, in whole or in part, the other Party’s Protected Material that is designated “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” shall not participate in the drafting, amendment, substitution or proposing for substitution of any patent claims pertaining to the technology of the inventions of the patents-in-suit (including semiconductors, processors, and related software for use in nanopore sensors and related devices for sensing nucleic acids or other polymer-based molecules and/or the fabrication or use thereof) (“Relevant Technology”) on behalf of the Receiving Party or its acquirer, successor, predecessor, exclusive licensee, or other affiliate during the pendency of this Action and for one year after its conclusion, including any appeals. For the sake of clarity, this Bar shall prohibit the participation of any individual who is associated with or has represented a Party who has received any of another Party’s HIGHLY CONFIDENTIAL– ATTORNEYS’ EYES ONLY or “HIGHLY CONFIDENTIAL – SOURCE CODE” materials in the drafting, amendment, substitution or proposing for substitution of any patent claims relating to the Relevant Technology on behalf of any entity having a financial interest in this litigation, including without limitation ONT, Ltd., Roche, or any affiliated entity, or other entity that Roche has, or has had within the past 5 years, a 10% or more ownership interest in during the pendency of this Action and for one year after its conclusion, including any appeals.

Nothing in this paragraph shall prevent any attorney or person associated with a Receiving Party that has received another Party’s or non-party’s HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE material from participating in any way in any post-grant patent proceedings (e.g., reexamination, inter partes

1 review, post-grant review, interference and/or derivation proceedings, and/or the transitional  
2 program for covered business method patents) that is instituted or sought to be instituted  
3 challenging the validity of any of the Genia Patents or the University Patent Applications, any  
4 patents within the same family as any of the Genia Patents or the University Patent Applications,  
5 or any patents to which any of the Genia Patents or the University Patent Applications claims  
6 priority; however, said attorney or person may not assist the Party in drafting, amending or  
7 proposing for substitution patent claims in a post-grant patent proceeding(s).

8 The receipt or review of those portions of documents and materials containing the  
9 following shall not trigger the Prosecution Bar set forth above: (i) publicly available publications,  
10 including patents and published patent applications; (ii) publicly available materials regarding  
11 third-party systems or products that were publicly known, on sale, or in public use;  
12 (iii) information that is otherwise publicly available; and (iv) documents and information related  
13 solely to damages or reasonable royalty rates.

14 The Patent Prosecution Bar set forth in the paragraphs above shall be personal to any  
15 attorney who reviews, accesses, or otherwise learns Protected Materials designated “HIGHLY  
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
17 CODE” and shall not be imputed to any other persons or attorneys at the attorney’s law firm or  
18 company unless information concerning the Protected Materials was communicated to an  
19 individual by one who reviewed such Protected Materials. The Patent Prosecution Bar set forth in  
20 the paragraphs above shall begin when Protected Materials designated as “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
22 CODE”, are first reviewed, accessed, or otherwise learned by the affected individual and shall  
23 end one year after final termination of this action, including appeals. However, the end of this  
24 Prosecution Bar shall not impact the duration of confidentiality obligations otherwise imposed by  
25 this Order.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

Inspection or production of documents (including physical objects) shall not constitute a waiver of the attorney-client privilege or work product immunity or any other applicable privilege or immunity from discovery if after the Producing Party becomes aware of any inadvertent or unintentional disclosure, the Producing Party designates any such documents as within the attorney-client privilege or work product immunity or any other applicable privilege or immunity and requests in writing return of such documents to the Producing Party. Upon request by the Producing Party, the Receiving Party shall immediately retrieve and return (or destroy) any and all copies of such inadvertently produced document(s), including retrieving and returning (or destroying) any and all copies distributed to others (e.g., experts, consultants, vendors). Nothing herein shall prevent the Receiving Party from challenging the propriety of the attorney-client privilege or work product immunity or other applicable privilege or immunity designation. In the event of such a challenge by the Receiving Party, the parties shall meet and confer by telephone or in person within three (3) days after the challenge is made to try to resolve the matter by agreement. If agreement cannot be reached, the parties promptly shall arrange for a call with the Court to seek resolution of the dispute. A Receiving Party may not retain any copies of any inadvertently produced document for any purpose, including the purpose of challenging the propriety of the attorney-client privilege or work product immunity or other applicable privilege or immunity designation; however, the Producing Party must add the document to a privilege log.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

14.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1           14.3   Export Control. Disclosure of Protected Material shall be subject to all applicable  
2 laws and regulations relating to the export of technical data contained in such Protected Material,  
3 including the release of such technical data to foreign persons or nationals in the United States or  
4 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
5 data, and the Receiving Party shall take measures necessary to ensure compliance.

6           14.4   Filing Protected Material. Without written permission from the Designating Party  
7 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
8 the public record in this action any Protected Material. A Party that seeks to file under seal any  
9 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
10 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
11 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
12 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
13 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
14 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the  
15 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule  
16 79-5(e)(2) unless otherwise instructed by the court.

17   15.   FINAL DISPOSITION

18           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
19 Receiving Party must return all Protected Material to the Producing Party or destroy such  
20 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
21 compilations, summaries, and any other format reproducing or capturing any of the Protected  
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
23 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
24 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
25 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
26 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
27 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
28 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,

1 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
2 product, and consultant and expert work product, even if such materials contain Protected  
3 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
4 this Protective Order as set forth in.

5  
6 Dated: September 21, 2017

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20 *The Regents of the University of California*  
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*Counsel for Defendants*  
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*Genia Technologies, Inc.*

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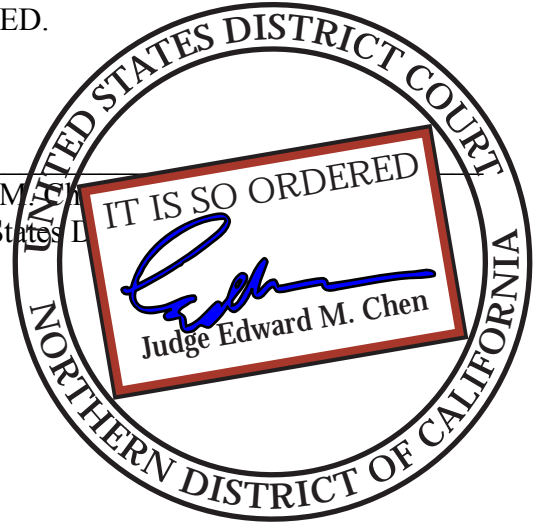
Dated: September 21, 2017

By: /s/ Stuart C. Plunkett  
Stuart C. Plunkett

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2  
3 DATED: 9/22/17 \_\_\_\_\_

4 Edward M. Chen  
United States District Judge



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
5 understand the Protective Order that was issued by the United States District Court for the  
6 Northern District of California on \_\_\_\_\_ [date] in the case of *The Regents of the University of*  
7 *California v. Roger Jinteh Arrigo Chen, Genia Technologies, Inc., and Does 1-25*, Case No. 3:16-  
8 cv-07396-EMC. I agree to comply with and to be bound by all the terms of this Protective Order,  
9 and I understand and acknowledge that failure to so comply could expose me to sanctions and  
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
11 any information or item that is subject to this Protective Order to any person or entity except in  
12 strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Northern District of California for the purpose of enforcing the terms of this Protective Order,  
15 even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone  
18 number] as my California agent for service of process in connection with this action or any  
19 proceedings related to enforcement of this Protective Order.

20  
21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23 Printed name: \_\_\_\_\_

24 [printed name]

25 Signature: \_\_\_\_\_

26 [signature]  
27  
28